IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 141 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THE STATE OF GUJARAT

Versus

VRAJLAL HIRJIBHAI GHODASARA

Appearance:

1. Criminal Appeal No. 141 of 1994

MR. A.J. DESAI, APP for Petitioner No. 1

NANAVATY ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.P.BUCH

Date of decision: 30/10/2002

CAV JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This Appeal under Section 378 (1) (3) of the Code of Criminal Procedure is directed against the judgment of acquittal rendered in Special Case No. 5 of 1988 by Learned Special Judge, Junagadh, acquitting the respondent (original accused) of the charges levelled under section 5 (2) of Prevention Of Corruption Act r/w section 161 of I.P.Code.

2. The facts leading to the present acquittal appeal shortly stated are that; one Manharlal Mulchand Gandhi had purchased land in Sanjay Society in partnership/ coownership and after purchase of said land, registration of purchase was executed on 22-3-1985; that the complainant on the basis of the sale deed and the ownership of the land, applied on 10/11-3-1987 (exh. 13) as organizer of the proposed Sanjaynagar Society, for change in name in the record of ownership, to the Talati-Cum-Mantri present respondent (original accused); that on the basis of the application, the complainant was asked by the respondent on 23-4-1987 to pay Rs.100/- by way of illegal gratification; that before two years of the acceptance of this illegal gratification in question, the respondent had demanded Rs.50/- for a certificate for starting a floor mill in thename of his wife Bhanumatiben; that said Rs.50/- was not paid to the respondent, so at this time respondent demanded Rs.150/from the complainant. Therefore the complainant lodged the complainant before the Anti Corruption Bureau at Junagadh on 24-4-1987; panchnama noting down the numbers of currency notes with anthracene powder smeared was drawn. That respondent was working as Talati Cum Mantri at Joshipara Gram Panchayat at the relevant time and was found caught red handed taking illegal gratification of Rs.150/- on 24-4-1987 in presence of the Panch Arjanbahi. Necessary panchnama was drawn at the place of incident and currency notes of Rs.150/- along with other documents etc. were seized.

That on completion of the investigation chargesheet was filed in the Court against the accused and the charge was framed vide exhibit-11. The accused (respondent) denied the charge levelled against him and claimed to be tried. In order to substantiate the charge against the accused, prosecution led oral as well as documentary evidence. Learned trial Judge recorded further statement under Section 313 of Cr.P.C. as regards the circumstances emerging from the prosecution evidence incriminating against the accused. The accused also gave statement in writing vide exhibit-51 and also produced documents vide exhibit- 51 to 64 and led defence

evidence. Learned trial Judge appreciating the evidence on record did not find the accused guilty of the charge levelled against him and exonerated the accused. It is this judgment acquitting the accused of the charges levelled against him which has been assailed by the State by way of present appeal.

3. We have heard the submissions advanced by Mr. A.J. Desai, Learned APP for the appellant State and Mr. N.D. Nanavati, learned senior counsel appearing for the respondent (original accused). We have perused the record & proceedings of the trial Court comprising oral as well as documentary evidence.

P.W. No.1 Amrutlal Daramsinh has deposed at exhibit-29 stating that he has been working as promoter of the housing society and doing the work of construction of houses in the name of "Sanjaynagar Society" and that; he had purchased a plot of land by registered document in the area of Joshipara Gram Panchayat and he had applied for getting the said land transferred to his name and he had given an application on 10/11-3-1987 to the Village Clerk (Talati) of Gram Panchayat for getting the said plot transferred to his name. At that time the Village Clerk had agreed to post an entry transferring the land to the name of the witness; that before 1 1/2 years in residential area of Ambawadi-II, a plot was purchased in the name of his wife for constructing/starting floor mill and for which application was submitted to the Secretary of the Panchayat. At that time, the accused was Secretary of the Panchayat and he had issued certificate for the same. That, he had told to get the name of the wife of the witness mentioned in the certificate for starting floor mill and the certificate was granted accordingly but no formalities were undergone and notification was also not issued and when he stated that in the said premises floor mill was to be started necessary change was effected in the certificate. At that time the accused had told the complainant that he will have to understand for the same. On asking about details of understanding, the accused had demanded Rs.50/- but as the complainant did not have money with him he promised to give the same later. Thereafrter on 23-4-1987 i.e. on the day prior to the trap, the complainant at about 6.00 p.m. in the evening, when he was passing through Sardarpara at that time the accused met him in the road and at that time accused was asked as to whether entry has been posted and as to when he will give the certificate. The accused said that he should give Rs.50/- of the first transaction and Rs.100/- for second transaction and in all on payment of Rs.150/he

would give certificate on the next day and complainant was asked to come on the next day,. i.e. 24-4-1987 after 6.00 O' Clock and obtain the certificate. That the complainant did not want to pay any illegal gratification, therefore on 24-4-1987 that is on the day of the trap, at about 3.00 O' Clock in the noon he went to ACB office and informed Investigating officer Mr. Chavda about the demand made by the accused and thereafter complaint exhibit-46 was given by the complainant. Thereafter complainant gave currency notes smeared with anthracene powder and the preliminary panchnama was drawn and numbers and denominations of the notes were noted down and thereafter the complainant along with panch No.1 went to the house of the accused. The complainant took out Rs.150/- from left side pocket of his trouser and gave to the accused with right hand which amount was accepted by the accused by putting it in the left side pocket of the bush shirt. Thereafter complainant gave sign to the members of the raiding party who were waiting at some distance and raiding party came to the place of incident and panch No.2 took out currency notes of Rs.150/- from the pocket of the accused which was seen in the ultra violet lamp and signs of powder were seen; that panchnama was drawn at the place of incident. That on both the hands of accused and pocket of the bush shirt marks of anthracene powder were seen in the ultra violet lamp. In the cross examination it is stated by the witness that after the first incident for which Rs.50/- was demanded by the accused the witness used to meet the accused in the market on many occasions and they used to waive hands at each other but the accused never demanded Rs.50/-. It is also stated that certificate for which he had gone on 27-8-1985 (previous transaction) is produced at exhibit-21. It is suggested from exhibit-21 that same bears signature of Ogad Shamji which has been admitted by the witness in the cross examination. That prior to exhibit-21 certificate, exhibit-22 was issued and for this certificate also an objection was raised by him that the same should be issued in the name of his wife, whereupon the accused is said to have stated that Rs.50/- will have to be paid for the second certificate. It is also admitted by the complainant that no demand was made for issuing certificate exhibit-22 but demand of Rs.50/- was made for the certificate to be issued in the name of his wife. It is also admitted that after making the correction, certificate exhibit-21 was given on 31st and at that time Rs.50/- was not demanded. It is also stated in the cross examination that when certificate exhibit-22 was given to the witness there was no correction but correction was made on the same day after it was given. The witness

again said that when certificate exhibit-22 was given on 29th thereafter, i.e. on 30th same was corrected.The witness again said that certificate exhibit-22 was given on 29-8-1985 as suggested from the application and the certificate but in reality certificate was given after one month. The witness again said that certificate exhiit-22 in his name was given on 29-8-1985. He cannot say that for correction in the certificate in the name of his wife he did not go on 29th but he went on 30-8-1985 and on that day application under signature of his wife dated 27-8-1985 was given. It is stated that amount paid to the accused was counted by one hand; that the accused did not use the other hand; that the markings of anthracene powder was found on one hand of the accused, i.e. on right hand; that the witness had given currency notes with left hand; that the accused did not count the notes with both the hands but he had counted the same with one hand; that both the hands of the witness did not have the marks of anthracene powder and only left hand contains marks of anthracene powder; that the witness again says that the accused counted notes with both hands; witness cannot say as to why both the hands did not contain marks of powder when accused had counted money with both the hands. It is further deposed that on 24-4-1987 witness had gone to the office of accused for taking certificate. It is denied that at that time he was given the certificate. It is also denied that in the carbon copy exhibit-39 signature of witness was taken in token of original certificate exh. 27 having been given. Witness again said that signature on exhibit-39 was put in the Panchayat office but certificate was not given, but was told to collect certificate in the evening after giving money; that when he went in the morning to collect certificate he had gone with the amount of Rs.150/- .

4. It will be seen from the above evidence of the complainant that there is inconsistency as regards demand and acceptance of the amount of Rs.100/- and Rs.50/- and also as regards the transaction including currency notes accepted by the accused. In the examination-in-chief it has been stated that the transaction of acceptance of money was with both the hands whereas in the cross examination it has been stated that the accused held the notes only with one hand and that the other hand did not touch the currency notes. Witness has also stated that certificate exhibit-27 was given at the time of drawing panchnama exhibit-41 but in the cross examination it has been stated that certificate exhibit-27 was produced/ seized/ recovered on the next day.

5. It would be seen from the prosecution case as well as the evidence of P.W. 1 that the prosecution case can be divided into two parts, first part relating to the alleged demand for Rs.50/- in connection with the earlier transaction, namely exhibit-21 issued in the name of the wife of the complainant for starting floor mill, and the second part for alleged demand of Rs.100/- on 23-4-1987 and acceptance of the same on 24-4-1987 for issuing certificate exhibit-27.

As seen above the complainant in his deposition exhibit-29 has stated that he wanted a certificate for running floor mill in the name of his wife Bhanumatiben and for which he had asked the accused to make necessary change and the accused had effected the change in the certificate exhibit-21 in the name of wife of the complainant.At that time he had asked for Rs.50/- but the complainant promised to pay the same later as he did not have the money. It is also suggested from the evidence of the complainant that thereafter the accused used to meet the complainant in the market and they used to waive hands at each other but the accused never demanded Rs.50/- and it is only on 23-4-1987 the accused asked to give Rs.50/-along with Rs.100/- for issuing exh. 27. As far as demand of Rs.50/for issuing changed certificate vide exhibit-21 in the name of Bhanumatiben wife of the complainant, it is the say of the complainant that the accused had demanded Rs.50/- at the time of issuing exhibit-21. In that case the accused would not have waited without repeating the demand till the occasion came to issue exhibit-27 on 23-4-1987. It is also admitted in exhibit-29 that the accused did not demand Rs.50/- for issuing certificate exhibit-22 but demand was made for issuing corrected certificate as regard to starting floor mill in the name of his wife exhibit-21 . It is also admitted in exhibit-29 that when he went for correction in the certificate on 31-8-1985 the accused did not demand Rs.50/-. Perusal of exhibit-21 suggests that the same does not bear signature of the accused but the same is signed by one Ogad Shamji as the Sarpanch, which fact is also admitted by the complainant (exh. 29). All these would make the prosecution case as regards demand of Rs.50/- for issuing exhibit-21 highly unbelievable.

6. As far as the second part,namely demand made on 23-4-1987 for Rs.100/- is concerned, as seen above complainant has deposed at exhibit-29 that he had purchased a plot of land for construction of house in the name "Sanjaynagar Society" as promoter/ organizer thereof in Joshipara area of Gram Panchayat and had applied for

mutating the said land in his name on 10/11-4-1987 and at that time the accused had agreed to post entry and accordingly on 23-4-1987 complainant met the accused on the road and informed the complainant that entry has been posted in his name and that he would give the certificate if the complainant pays Rs.50/- of the previous transaction and Rs.100/- for present transaction; in all Rs.150/- and on such payment certificate should be collected on the next day, i.e. on 24-4-1987 at 6.00 p.m. from his residence. Thus the complainant was to collect the certificate exhibit-27 in the evening of 24-4-1987 from the residence of the accused on payment of Rs.150/-. That when he reached, accompanied by panch at the house of the accused, he was sitting opposite to his house nearby a pan shop, and on inquiry from accused complainant said that he had brought Rs.150/- and that complainant gave Rs.150/- with his left had which the accused received withhis right hand and he had counted the same; that thereafter the complainant gave signal and raiding party came and panch no.2 took out currency notes from the pocket of the accused. Currency notes of Rs.7/- were also recovered from pocket of the accused along with Rs.150/-. The evidence of P.W. 1 suggests that permission for constructin of the house was taken from the Secretary of thePanchayat, the accused was doing revenue work and that the witness often goes to the Panchayat office for his work; that the accused used to collect land revenue. It is suggested from evidence of complainant, particularly in examination-in-chief that transaction of giving and taking money on 24-4-1987 was with both the hands, but in the cross-examination it has been stated that the accused accepted currency notes with one hand and that the accused did not touch the currency notes with other hand. According to panchnama exhibit-41 marks of anthracene powder were seen on one hand of the accused.

7. It may be appreciated that the transaction of demand and acceptance of Rs.100/- was for issue of certificate exhibit-27 and according to complainant he was holding exhibit-27 with one hand and he gave signal to the raiding party with the other hand. It is deposed in the cross examination hat exhibit-27 was produced at the time of panchnama, whereas in the cross examination it has been deposed that certificate exhibit-27 was recovered on the second day. According to panchanama exhibit-41 signs of anthracene powder were seen on one hand of the accused.

8. It is pertinent to note that in the seizure memo exhibit-42 there is no reference to recovery/ seizure of

certificate exhibit-27. Perusal of exhibit-41 suggests that mention of certificate exhiit-27 which is underlined in red is subsequently added, since the continuity of sentence is not suggested thereafter, and in the limited space last sentence is added, in the last but one para to show seizure of exhibit-27 vide panchnama exhibit-41. Now reading these parts of the panchnama exh.41 it is clearly suggested that the writings underlined in red have been subsequently written/added. Now, if exhibit-27 as deposed by complainant was produced on the next day then how there can be marks of anthracene powder on exhibit-27 as the same is admittedly not recovered on 24-4-1987 and as there is no reference in the seizure memo exhibit-42. This would suggest that the certificate exhibit-27 was not given to the complainant at the time of trap and the same was not recovered vide panchnama exhibit-41 and that is why there is no reference of the same in exhibit-42 which was prepared at the place of incident. It is pertinent to note that along with Rs.150/- i.e. bribe money, Rs.7-00 were also recovered as muddamal from accused which have been shown in the seizure memo exhibit-42. Now if recovery of currency notes of Rs.7-00 could be shown in the seizure memo why recovery of certificate exhibit-27 in the seizure memo exhibit-42 was not shown. This would also go to show that in fact exhiit-27 was not recovered vide seizure memo exhibit-42 on 24-4-1987.

9. According to defence exhibit-27 was given to complainant in the afternoon of 24-4-1987 and at that time signature of complainant was taken on copy exhibit-39 in token of receipt ofexhibit-27. Perusal of exhibit-39 suggests that the same has been signed by the complainant on 24-4-1987. According to defence the complainant after getting the receipts exh. 52 to 57 prepared told that he did not have money i.e. Rs.112/which was to be paid by way of kiraya at the rate of Rs.10.20 per year and the accused suspected the behaviour of the complainant as he after getting certificate exhibit-27, after signing exhibit-39 in token of receipt of having received original certificate exh.27 and also got prepared receipts exh. 52 to 57, pretended that he did not have money and said that he would come after some time and pay the money. The accused suspecting this behaviour of the complainant and got the true copies of exhibit 28 and 52 to 61. This version sounds consistent with the concoction by the complainant looking to the fact that exhiit-27 was not recovered vide exhibit-42 and therefore there is no reference of exhibit-27 in the seizure memo exhibit-42 as the name was recovered by the complainant in the afternoon of

24-4-1987 in the office of Panchayat and that is why exhibit-27 has been recovered on the next day from the complainant.

10. Panch witness Arjanbhai Samatbhai in his deposition exhibit-40 has proved panchanama exhibit-41. According to this witness accused gave one paper at the place of incident after he accepted the money given by complainant and the accused had counted the same; that the accused had taken money with his right hand and that the complainant was holding certificate in his one hand and gave signal with the other hand. If the complainant was holding certificate with one hand and gave the signal with other hand then how anthracene powder was seen on both the hands of complainant. This witness does not say that the certificate which the complainant held in his right hand was recovered vide panchnama exhibit-41 during trap. It is also suggested from the evidence of this witness that the partner Manharlal Gandhi is known to the witness since 1980 as the witness was serving in Janta Ice Factory at Mangrol and Manharlal Gandhi also belongs to Mangrol and whenever witness visits Junagadh he would meet Manharlal; that the witness used to go to meet Govind Mistry who is the tenant of Manharlal and about 8 days before the incident he met Manharlal when he was sitting at the house of Govind Mistry; that in the same lane Manharlal is also staying and while returning from work almost daily Manharlal used to meet the witness. Thus it will be seen that the possibility cannot be ruled out that the witness exhibit-40 has been put forward looking to his relations with Manharlal Gandhi, partner of the complainant. This witness also admits that at the time of trap anthracene powder was found on both the hands of complainant whereas anthracene powder was found on right hand of the accused. Thus it will be seen that the evidence of panch witness is inconsistent with the panchnama exhibit-41. This witness also admits that he did not hear the talk between accused and the complainant nor did he see giving and acceptance of money between complainant and the accused. The evidence of this witness also disclosed that he is hardly known to the complainant and relation between Manharlal and complainant are suggested from the transaction/document. Thus presence of panch No.1 cannot be said to be natural but the same seems to be a pre arranged systematic plan.

11. Investigating officer Manuji Gabaji Chavda has deposed at exhbit-45. According to him accused was sitting on a bench and complainant with witness exh. 40 went there and sat with the accused and after complainant sat for 20 minutes he gave signal by putting his hand on

his head. It is also stated by this witness that both the hands of the complainant were smeared with anthracene powder and complainant was holding certificate exhibit-27 in his left hand which also had marks of powder. According to the complainant, as pointed out above, he had held certificate given by the accused in his right hand and also gave signal with the right hand. Though this is not a major contradiction but that will show the veracity of the evidence. Witness exhibit-45 does not say atleast in examination in chief that exhibit-27 was recovered at the place of trap. It need hardly be said that the recovery of certificate exhibit-27 with marks of anthracene powder would be a circumstance which will be very important. If certificate exhibit-27 was given at trap and contained powder marks then the same would be recovered vide seizure memo exhibit-42 as the currency notes of Rs.7-00 recovered from the pocket of the accused have been recovered vide exhibit-42. It is pertinent to note that even in the muddamal receipt exhibit-2 there is reference of recovery of currency notes of Rs.150/recovered from accused, but exhibit-2 does not refer to certificate exhibit-27. Under the circumstances recovery of certificate exhibit-27 cannot be said to be on 24-4-1987 vide exh. 41 from the complainant stated to have been given by the accused on the alleged receipt of Rs.150/-, from the complainant in the evening of 24-4-1987.

12. As observed earlier exhiit-39 is copy of exhibit-27. As pointed out above exhibit-39 bears the signature of complainant with the date 24-4-1987. Perusal of exhibit-27, which is according to defence collected by the complainant from office of Panchayat in the afternoon of 24-4-1987, suggests that the same bears signature of complainant with the date 24-4-1987. Now according to witness exhibit-45 exhibit-27 was recovered vide exhibit-41 and the same was seized and kept with him on which signature of the complainant was obtained. It is not the say of witness exhibit-45 that he obtained signature of complainant on exhibit-27. There is no explanation as to how exhibit-27 bears complainant's signature, since there is no possibility of complainant signing exhibit-27 after the same was recovered by witness exhibit-45 vide exh. 41. The evidence of panch witness exhibit-40 suggests that on all the articles recovered vide exhibit-41 signature of the panch was obtained. On exhibit-27, there is no such signature of the panch exh. 40 which would also go to show that exhibit-27 was not recovered vide exhibit-41 and that is why not to be found in seizure memo exhibit-42 also.

13. It is pertinent to note that in para-19 of the evidence complainant has specifically stated that exhibit-27 was recovered by Investigating Officer Mr.Chavda (exh. 45) on the next date when his statement was recored and at that time there is no panchnama drawn for recovery of exhibit-27. This would destroy the prosecution version that exhibit-27 was recovered by panchnama exhibit-41 at the time of trap. The complainant has admitted that exhibit-39 bears his signature with the date 24-4-1987. It is also admitted that on 24-4-1987 he had gone to the office of the accused for getting certificate exhibit-27. It is also stated that he had signed exhibit-27 but he was not given certificate exhibit-27. It is stated that he had gone in the morning of 24-4-1987 to collect the certificate and at that time he had gone with Rs.150/- as demanded on previous day. Thus it would be be seen that there is inconsistency and contradictory statements made by the complainant with regard to collecting exhibit-27 since the complainant has stated in his evidence that he had met the accused in the morning of 24-4-1987 for collecting certificate exh. 27.

14. D.W. 1 Dy. Mamlatdar Jayantilal Maganlal Lalkani in his evidence exhibit-66 stated that on 24-4-1987 (i.e. on the day of trap) accused had come to his office with the xerox copies of six receipts for getting the same certified between 3.30 to 5.00 p.m. during office hours. In the cross examination nothing substantial has been brought out by prosecution to dislodge this witness which would go to show that the accused got the xerox copies of six receipts certified by this witness during office hours on 24-4-1987 between 3.30 p.m. to 5.00 p.m. and the witness in his cross examination denied that on 25-4-1987 he had certified xerox copies of six receipts. It is also suggested from the evidence that after receipt No. 123, 124 & 125 for payment of kiraya (land revenue) on the same day receipt 126 and 127 have also been issued to other persons namely Ranjan Ratilal and Kantaben Purshottam for payments of government revenue. Statements of these persons have not been recorded in course of investigation for the explanation given by accused for the amount paid in the evening of 24-4-1987, being government revenue (kiraya) which remained to be paid for receipts exhibit-52 to 57. It is not suggested by satisfactory evidence that it was agreed between complainant and the accused to meet at 6.00p.m. on 24-4-1987 for payment and acceptance of bribe money. Since on the say of complainant himself accused and complainant met in the morning on the day of trap and there was insistence by the complainant for

getting certificate exhibit-27 on the same day and at that time the accused insisted for payment of government revenue as the complaint got the receipt exhibit-51 to 52 prepared and pretended that he has forgotten vallate and took away certificate exhibit-27 as stated by accused in written statement and for that reason the receipts exh. 52 to 57 which were got prepared by complainant remained as it is.

15. The above discussion would reveal that the prosecution in the first instance has not been able to prove by any satisfactory evidence, that, at the time of issue of corrected certificate exh. 21 in the name of wife of the complainant the accused demanded Rs.50/- for the reasons aforesaid. As seen above, the prosecution has also not been able to establish that on 23-4-1987 the accused asked the complainant to come with Rs.50/- for previous transaction (correction in exh. 21) and additionally Rs.100/- for the issue of certificate exh. 27, and that, the accused in the morning of 24-4-1987 asked the complainant to come at 6.00 p.m. at his residence for collecting certificate exh. 27 on payment of Rs.50/- for previous transaction and Rs.100/- for issue of certificate exh. 27. The prosecution has also not been able to establish by any cogent evidence that Rs.150/- given to the accused by the complainant at the time of trap in the evening of 24-4-1987 was an illegal gratification as alleged. Considering the signature on exh. 39 appended by complainant during office hours on 24-4-1987 in token of having received the certificate exh. 27, the prosecution has not been able to prove that the accused gave certificate exh. 27 at the time of trap and accepted Rs.150/- by way of illegal gratification. As seen above the prosecution has not been able to show that exh. 27 was given by the accused to the complainant at the time of trap in the evening of 24-4-1987, since the additional writing in the panchnama exh. 41 at two places as observed above clearly suggests that the said writings as regards the certificate exh. 27 having been given by the accused to the complainant at the time of trap and the same having been seen with ultra violet lamp at the time of preparing exh. 41 and also recovery/ seizure of exh. 27 as sought to be suggested by adding one sentence at the end of last but one part of the exh. 41 are clearly suggestive of subsequent addition of the writtings to the effect that exh. 27 was recovered vide panchnama exh. 41. As pointed out above the evidence clearly shows that the certificate exh. 27 was recovered from the complainant on the next day of the trap, i.e. 25-4-1987 as admitted by the complainant himself, as the same also does not find place in the seizure memo exh.

42. All these would suggest that the prosecution has not been able to establish the charges levelled against the accused.

16. It is a settled legal position that the fact finding body's conclusion on factual aspects are not interfered with, unless there is wrong application of principles of law, or the facts are misread or not read. It is not the function of the appellate Court to substitute its own finding dislodging the finding of facts arrived at by the trial Court on appreciating the evidence and the application of law. In the instant case, it is not suggested that the trial Court has either misread evidence or has wrongly applied or misapplied the principles of law, and in absence of either, the appellate Court, even if other view is possible, would not interfere with the view taken by the trial Court and substitute its own.

17. In the result, we are in agreement with the view taken by the Trial Court exonerating the respondent (accused) of the charges levelled against him and the acquittal recorded by the Trial Court deserves to be confirmed and the appeal being devoid of merits liable to be dismissed.

18. In the result appeal fails.

Dt: 30-10-2002 (N.G. Nandi, J)

(D.P. Buch, J)

/vgn